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Attorneys for Plaintiff: JAMES RUTHERFORD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA- EASTERN DIVISION

JAMES RUTHERFORD, an
individual,

Plaintiff,

v.

TACOS LA BUFADORA, a
business entity of unknown form;
TALAT RADWAN, TRUSTEE OF
THE J.N.J TRUST DATED
SEPTEMBER 1, 1996 AND
AMENDED SEPTEMBER 5, 2005;
and DOES 1-10, inclusive,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, James Rutherford ("Plaintiff"), complains of Defendants Tacos La
Bufadora, a business entity of unknown form; Talat Radwan, Trustee of the J.N.J
Trust dated September 1, 1996 and amended September 5, 2005; and DOES 1-10

1 (“Defendants”) and alleges as follows:

2 **PARTIES:**

3 1. Plaintiff is an adult California resident. Plaintiff is substantially limited
4 in performing one or more major life activities, including but not limited to:
5 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping
6 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,
7 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff
8 qualifies as a member of a protected class under the Americans with Disabilities Act
9 (“ADA”), 42 U.S.C. §12102(2) and the regulations implementing the ADA set forth
10 at 28 C.F.R. §§ 36.101 et seq. At the time of Plaintiff’s visits to Defendant’s facility
11 and prior to instituting this action, Plaintiff suffered from a “qualified disability”
12 under the ADA, including those set forth in this paragraph. Plaintiff is also the
13 holder of a Disabled Person Parking Placard.
14

15 2. Plaintiff brings this action acting as a “private attorney general” as
16 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
17 enforcement of the ADA without the American tax payer(s) bearing the financial tax
18 burden for such action.
19

20 3. Defendant Talat Radwan, Trustee of the J.N.J Trust dated September 1,
21 1996 and amended September 5, 2005, owned the property located at 2560 N. Perris
22 Blvd Perris, CA 92571 (“Property”) on April 18, 2018 and July 7, 2018.

23 4. Defendant Talat Radwan, Trustee of the J.N.J Trust dated September 1,
24 1996 and amended September 5, 2005, owns the Property currently.

25 5. Tacos La Bufadora, a business entity form unknown, owned, operated
26 and controlled the business of Tacos La Bufadora (“Business”) on April 18, 2018
27 and July 7, 2018.

28 6. Tacos La Bufadora, a business entity form unknown, owns, operates

1 and controls the Business currently.

2 7. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the Property and Business, or their relative
4 responsibilities in causing the access violations herein complained of, and alleges a
5 joint venture and common enterprise by all such Defendants. Plaintiff is informed
6 and believes that each of the Defendants herein, including Does 1 through 10,
7 inclusive, is responsible in some capacity for the events herein alleged, or is a
8 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
9 when the true names, capacities, connections, and responsibilities of the Defendants
10 and Does 1 through 10, inclusive, are ascertained.

11 **JURISDICTION AND VENUE**

12 8. This Court has subject matter jurisdiction over this action pursuant
13 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
14 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

15 9. This court has supplemental jurisdiction over Plaintiff's non-federal
16 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
17 related to Plaintiff's federal ADA claims in that they have the same nucleus of
18 operative facts and arising out of the same transactions, they form part of the same
19 case or controversy under Article III of the United States Constitution.

20 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
21 Property which is the subject of this action is located in this district and because
22 Plaintiff's causes of action arose in this district.

23 **FACTUAL ALLEGATIONS**

24 11. Plaintiff went to the Business on or about April 18, 2018 and July 7,
25 2018 to eat.

26 12. The Business, including the Property, is a facility open to the public, a
27 place of public accommodation, and a business establishment.

28 13. Parking spaces are some of the facilities, privileges and advantages

1 reserved by Defendants to persons patronizing the Business and Property.

2 14. Unfortunately, although parking spaces were some of the facilities
3 reserved for patrons, there were barriers for persons with disabilities that cause the
4 named facilities to fail as to compliance with the Americans with Disability Act
5 Accessibility Guidelines (“ADAAG”) on or around April 18, 2018 and July 7, 2018,
6 or at any time thereafter up to and including, the date of the filing of this complaint.

7 15. Instead of having architectural barrier free facilities for patrons with
8 disabilities, Plaintiff experienced the following at the Business and Property: A curb
9 ramp projects into the accessible parking space access aisle serving the main
10 entrance in violation of Section 406.5 which requires that curb ramps and the flared
11 sides of curb ramps shall be located so that they do not project into vehicular traffic
12 lanes, parking spaces, or parking access aisles; the water supply and drain pipes
13 under the sink are not insulated or otherwise configured to protect against burning
14 per Section 606.5; the bottom edge of the sink mirror is approximately 60 inches
15 high which exceeds 40 inches in height which is the maximum allowed per Section
16 603.3; per 604.7, toilet paper dispensers shall comply with 309.4 and shall be 7
17 inches (180 mm) minimum and 9 inches (230 mm) maximum in front of the water
18 closet measured to the centerline of the dispenser; and the space between the grab
19 bar and projecting objects above shall be 12 inches (305 mm) minimum per Section
20 609.3.

21 16. Subject to the reservation of rights to assert further violations of law
22 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
23 violations which affect him personally.

24 17. Plaintiff is informed and believes and thereon alleges that, currently,
25 there are no compliant, accessible Business facilities designed, reserved and
26 available to persons with disabilities at the Business in addition to that alleged *supra*.

27 18. Plaintiff is informed and believes and thereon alleges that Defendants
28 had no policy or plan in place to make sure that the parking spaces were compliant

1 for persons with disabilities and remained compliant prior to April 18, 2018 and July
2 7, 2018.

3 19. Plaintiff is informed and believes and thereon alleges Defendants have
4 no policy or plan in place to make sure that the complaints of violations alleged
5 above are available to persons with disabilities and remain compliant currently.

6 20. Plaintiff personally encountered the above alleged barriers when
7 attempting to access the Business and Property. These inaccessible conditions
8 denied the Plaintiff full and equal access and caused him difficulty, humiliation,
9 frustration and upset.

10 21. As an individual with a mobility disability who at times is dependent
11 upon a mobility device, Plaintiff has a keen interest in whether public
12 accommodations have architectural barriers that impede full accessibility to those
13 accommodations by individuals with mobility impairments.

14 22. Plaintiff is being deterred from patronizing the Business and its
15 accommodations on particular occasions, but intends to return to the Business for the
16 dual purpose of availing himself of the goods and services offered to the public and
17 to ensure that the Business ceases evading its responsibilities under federal and state
18 law.

19 23. As a result of his difficulty, humiliation, and frustration because of the
20 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
21 the Business or Property. However, Plaintiff would like to return to the location
22 given its close proximity to an area he frequents from time to time.

23 24. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 25. The violations identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the Department of
28 Justice as presumably readily achievable to remove and, in fact, these barriers are

1 readily achievable to remove. Moreover, there are numerous alternative
 2 accommodations that could be made to provide a greater level of access if complete
 3 removal were not achievable.

4 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 5 alleges, on information and belief, that there are other violations and barriers in the
 6 site that relate to his disabilities. Plaintiff will amend the complaint, to provide
 7 proper notice regarding the scope of this lawsuit, once he conducts a site inspection.
 8 However, please be on notice that Plaintiff seeks to have all barriers related to their
 9 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
 10 that once a plaintiff encounters one barrier at a site, he can sue to have all barriers
 11 that relate to his disability removed regardless of whether he personally encountered
 12 them).

13 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 14 alleges, on information and belief, that the failure to remove these barriers was
 15 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 16 defendants exercised control and dominion over the conditions at this location, and
 17 therefore, (3) the lack of accessible facilities was not an accident because had the
 18 defendants intended any other configuration, they had the means and ability to make
 19 the change.

20 28. Without injunctive relief, plaintiff will continue to be unable to fully
 21 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

24 **42 U.S.C. § 12181 et seq.**

25 29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 26 above and each and every other paragraph in this Complaint necessary or helpful to
 27 state this cause of action as though fully set forth herein.

28 30. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods, and services of any place
 2 of public accommodation are offered on a full and equal basis by anyone who owns,
 3 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

4 Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 14 Appendix "D".
- 15 c. A failure to make alterations in such a manner that, to the
 16 maximum extent feasible, the altered portions of the facility are
 17 readily accessible to and usable by individuals with disabilities,
 18 including individuals who use wheelchairs, or to ensure that, to
 19 the maximum extent feasible, the path of travel to the altered area
 20 and the bathrooms, telephones, and drinking fountains serving
 21 the area, are readily accessible to and usable by individuals with
 22 disabilities. 42 U.S.C. § 12183(a)(2).

23 31. Any business that provides parking spaces must provide accessible
 24 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
 25 Standards, parking spaces and access aisles must be level with surface slopes not
 26 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
 27 Standards, access aisles shall be at the same level as the parking spaces they serve.
 28 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are

1 required to be nearly level in all directions to provide a surface for wheelchair
 2 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
 3 up curb ramps are not permitted to project into access aisles and parking spaces. Id.
 4 No more than a 1:48 slope is permitted. Standards § 502.4.

5 32. Here, the failure to ensure that accessible facilities were available and
 6 ready to be used by Plaintiff is a violation of law.

7 33. A public accommodation must maintain in operable working condition
 8 those features of its facilities and equipment that are required to be readily accessible
 9 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 34. Given its location and options, Plaintiff will continue to desire to
 11 patronize the Business but he has been and will continue to be discriminated against
 12 due to lack of accessible facilities and, therefore, seek injunctive relief to remove the
 13 barriers.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**

16 **CODE § 51 *et seq.***

17 35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 18 above and each and every other paragraph in this Complaint necessary or helpful to
 19 state this cause of action as though fully set forth herein.

20 36. California Civil Code § 51 *et seq.* guarantees equal access for people
 21 with disabilities to the accommodations, advantages, facilities, privileges, and
 22 services of all business establishments of any kind whatsoever. Defendants are
 23 systematically violating the UCRA, Civil Code § 51 *et seq.*

24 37. Because Defendants violate Plaintiff's rights under the ADA, they also
 25 violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f),
 26 52(a).) These violations are ongoing.

27 38. Defendants' actions constitute intentional discrimination against
 28 Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil

Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants have been previously put on actual notice that its premises are inaccessible to Plaintiff as above alleged. Despite this knowledge, Defendants maintain the Property and Business in an inaccessible form.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note: Plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act at all.**

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for each time he visits an establishment that contains architectural barriers that deny the Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.* (2005) 431 F.Supp.2d 1088, 1091.)

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016);

4. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

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DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

Dated: August 28, 2018

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.
Joseph R. Manning Jr., Esq.
Michael J. Manning, Esq.
Craig G. Côté, Esq.
Attorneys for Plaintiff